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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
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12 CHRISTOPHER P. NAEYAERT,

13 Plaintiff,

14 vs.

15 KIMBERLY-CLARK CORPORATION,
16 et al.

17 Defendants.
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CASE NO.: 5:17-cv-0950 SJO (SPx)

Assigned to: Hon. S. James Otero

NOTICE OF RELATED CASES
[Local Rule 83-1.3]

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

In accordance with Local Rule 83-1.3, Plaintiff Christopher P. Naeyaert (“Plaintiff”) files the instant Notice of Related Case. The case Bahamas Surgery Center, LLC v. Kimberly-Clark Corporation, et al., U.S. District Court, Central District of California, Case No. 2:14-cv-08390-DMG-PLA, the Honorable Dolly M. Gee presiding, was filed on October 29, 2014 (the “Bahamas Case”). The case Medline Industries, Inc. v. Kimberly-Clark Corporation, et al., U.S. District Court, Central District of California, Case No. 2:16-cv-08571 DMG (PLAx), was filed on November 17, 2016 (the “Medline Case”). The Bahamas Case and the Medline Case shall collectively be referred to hereafter as the “Related Cases.”

For the reasons stated below, this case (a) arises from the same or a closely related transaction, happening, or event as the Related Cases, (b) calls for a determination of the same or substantially related or similar questions of law and fact as the Related Cases, and (c) would likely entail substantial duplication of labor if heard by a different judge from the Related Cases.

First, like the present case, the Related Cases pertain to Kimberly-Clark Corporation’s marketing and sale of medical gowns in which the plaintiffs in all three cases allege that Kimberly-Clark falsely represented the gowns as passing relevant industry standards for liquid barrier protection and concealing its knowledge that these standards had not been satisfied.

Second, assigning the present case to a different judge from the Related Cases would result in unnecessary duplication of labor, create a risk of inconsistent rulings, and would thus be counter to the interest of judicial economy. The presiding judge in the Related Cases has acquired extensive knowledge and familiarity over the subject matter of the Related Cases. Judge Gee has presided over the Bahamas Case for more than two and a half years and recently presided over a two week trial in which the jury rendered a verdict for the plaintiff and the class in the amount of \$454 Million. The Court subsequently also found for the Plaintiff as to Plaintiff’s UCL claim and issued

1 detailed findings of fact and conclusions of law. [Dkt No. 529.] The Bahamas Case has
2 been extensively litigated before Judge Gee, with more than 500 docket entries having
3 been generated in the case. During this time, the parties have conducted extensive
4 discovery, including producing documents, taking depositions, and providing expert
5 discovery. Judge Gee also issued detailed written orders on class certification and the
6 defendants' motion for summary judgment, after hearing extensive oral argument, and
7 has provided many additional rulings on important issues in the case.

8 Judge Gee also presides over the Medline Case. The plaintiff in the Medline
9 Case alleges that Kimberly-Clark, along with Halyard Health, Inc., falsely advertised
10 the fluid barrier protection qualities and effectiveness of the AAMI Level 4
11 MICROCOOL* Breathable High Performance Surgical Gowns (the "MicroCool
12 Gowns") and the AAMI Level 3 ULTRA Surgical Gowns (the "Ultra Gowns"). The
13 plaintiff asserts that Kimberly-Clark and Halyard Health's false representations and
14 concealment of material facts was false advertising and unfair competition that diverted
15 sales away from the plaintiff's competing products. Importantly, like this case, the
16 Medline Case was not assigned to Judge Gee upon filing. Less than a week after a
17 notice of related case was filed in the Medline Case, on November 23, 2016, Judge Gee
18 signed a consent to the transfer of the Medline case to Judge Gee's calendar.

19 Finally, reassigning the case at this early stage would not cause any prejudice to
20 Kimberly-Clark or this Court. This Court has not made any substantive rulings in the
21 case, the pleadings are not yet at issue, no trial has been set, a scheduling order has not
22 been entered, and the parties have not commenced discovery. Accordingly,
23 reassignment to the appropriate judge with the most familiarity with the facts and law of
24 this case at this juncture would be the most prudent course.

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I. THE CASES SHOULD BE DEEMED RELATED BECAUSE THEY ARISE OUT OF THE SAME NUCLEUS OF FACTS AND INVOLVE THE SAME LEGAL AND FACTUAL ISSUES.

This action and the Related Cases seek redress from defendant Kimberly-Clark Corporation for its false and misleading representations in connection with its advertising, promotion, marketing, and sale of medical gowns, which it claimed provided the highest levels of liquid barrier protection from the transfer of bodily fluids, bacteria, and infection between a patient and healthcare professional. Plaintiff Christopher Naeyaert (“Plaintiff”) was a healthcare worker at Eisenhower Medical Center (one of the class members in the Bahamas Case). Plaintiff alleges that contrary to its representations, Kimberly-Clark has known since at least as early as 2012 that its ULTRA Surgical Gowns (hereafter, the “Ultra Gowns”) failed industry standard tests, did not pass the relevant standards for gowns represented to be AAMI Level 3, and are unsafe as a result. And yet from at least as early as 2012 to the present, Plaintiff asserts that Kimberly-Clark has continued to falsely represent the Ultra Gowns as AAMI Level 3, and misrepresent to customers and the general public that these gowns provide among the highest levels of liquid protection and are thus supposedly effective when treating patients with serious diseases; despite all the while knowing and failing to disclose that they are unsafe for AAMI Level 3 medical procedures and pose great risk of bodily harm and possibly death to patients and healthcare professionals worldwide. Plaintiff used the Ultra Gowns in connection with assisting with the medical treatment of patients. Plaintiff alleges that as a result of Kimberly-Clark’s false representations and concealment of material facts, Plaintiff suffered serious injuries.

II. IN THE INTERESTS OF JUDICIAL ECONOMY, AND CONSISTENCY, THE CASES SHOULD BE RELATED.

In light of the closely related factual and legal issues presented in these cases, Plaintiff Naeyaert submits that litigating the Related Cases and this case in separate

1 courtrooms will create a substantial duplication of labor if heard by different judges. As
2 noted above, Judge Gee is already familiar with the facts and the relevant law by
3 presiding over the Bahamas Case for more than two and a half years, including having
4 presided over a two week jury trial resulting in a verdict.

5 Judge Gee also presides over the Medline Case after that case was deemed
6 related, and will be deciding a motion to dismiss and to transfer venue filed by the
7 defendants, including Kimberly-Clark.

8 The parties have conducted extensive discovery under the direction provided by
9 Judge Gee's rulings in the Bahamas Case.

10 Further, Judge Gee has ruled on many important motions, including, among
11 others, Kimberly-Clark's motion for summary judgment, Kimberly-Clark's motion to
12 dismiss pursuant to Rule 12(b)(6), and the plaintiffs' motion for class certification.

13 Evidence relating to the quality and compliance problems with the Ultra Gowns,
14 particularly as it related to sleeve seam failures and strikethrough, complaints made to
15 Kimberly-Clark regarding sleeve seam failures and strikethrough, and lessons learned
16 from the compliance problems the company experienced in attempting to address the
17 issues with the Ultra Gowns, were presented at trial in the Bahamas Case.

18 Moreover, evidence at trial in the Bahamas Case showed that the Ultra Gowns
19 were manufactured at the same facility in Honduras where the MicroCool Gowns were
20 made, that the Ultra Gowns' sleeve seams were sealed using the same defective and
21 substandard bar sealer machines as the MicroCool Gowns, and that as a result, the Ultra
22 Gowns had the same problems with sleeve seam failures as the MicroCool Gowns.

23 In addition, like this case, the Medline Case involves allegations of
24 misrepresentations, concealment of material facts, and defects with the Ultra Gowns.

25 In sum, a new judge having to spend the time and effort to get up to speed and
26 become familiar with the myriad of relevant factual and legal issues when Judge Gee
27 has already done so would result in a substantial and expensive duplication of labor, and
28 further, creates an unnecessary risk of inconsistent rulings.

1 **III. CONCLUSION**

2 Accordingly, the present case and the Related Cases are “related cases” within
3 the meaning of Local Rule 83-1.3 and the present case should be assigned to Judge Gee.
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5 Dated: May 16, 2017

EAGAN AVENATTI, LLP

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7 By: /s/ Michael J. Avenatti

8 Michael J. Avenatti

9 Attorneys for Plaintiff

10 Christopher P. Naeyaert
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